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The initial operationalisation stage of the EU's *Carbon Border Adjustment Mechanism* (CBAM) approaches – Trading partners remain critical

On 13 December 2022, negotiators of the Council of the EU (hereinafter, Council) and the European Parliament reached a provisional agreement on the EU's Carbon Border Adjustment Mechanism (hereinafter, CBAM). The agreement still needs to be formally adopted by the Council and the European Parliament. Since it was first announced, the EU's trading partners, particularly developing and least developed countries, have raised questions on whether the future EU rules would violate multilaterally agreed trade and environmental rules. This article delves into some of the CBAM's trade and trade-related environmental aspects, which are expected to be further scrutinised at the World Trade Organization (hereinafter, WTO) in the coming months, especially within the Committee on Trade and Environment (hereinafter, CTE), where concerns have already been raised by some WTO Members.

The CBAM's scope and timeline for implementation

The CBAM is part of the EU's *"Fit for 55 in 2030*" package, which is the EU's plan to reduce greenhouse gas emissions by at least 55% by 2030. The introduction of the CBAM was motivated, in large part, by the concern that companies based in the EU and subject to the EU's strict environmental policies, notably the EU's Emissions Trading System (hereinafter, ETS), could be faced with competition from imported products that are subject to less stringent rules in the country of origin and that are, therefore, more competitive (see *Trade Perspectives*, Issue No. 15 of 1 August 2022).

The CBAM's innovative element lies in the fact that it applies the concept of carbon pricing to imports of foreign goods that have not been subject to an equivalent carbon levy in their respective country of origin, which aims at preventing the phenomenon of "*carbon leakage*" occurring when businesses transfer their manufacturing to countries where more flexible emission constraints lead to an increase in total emissions. The CBAM will subject the import of certain products from outside of the EU and outside of the Member States of the European Free Trade Association EFTA (*i.e.*, Iceland, Liechtenstein, Norway, and Switzerland) to a carbon levy linked to the carbon price payable under the EU's Emissions Trading System (hereinafter, ETS) when the same goods are produced within the EU. To pay the carbon levy under the CBAM, EU importers will be required to purchase CBAM certificates and submit

annual CBAM declarations through an EU-wide registry. In simple terms, the annual declaration must indicate the basic data needed for compliance, such as the total quantity of CBAM goods imported during the previous calendar year, the total emissions embedded in those goods, the total number of CBAM certificates, as well as a copy of the verification report of the embedded emissions issued by the accredited verifier.

Under the provisional agreement reached by the EU Institutions, the CBAM will begin to operate from October 2023 onwards. Initially, a "*simplified version*" of the CBAM will be applied, merely obliging importers to collect data related to their products' carbon emissions and report four times a year to the European Commission (hereinafter, Commission). The report is to provide the information needed for compliance with the new rules, for instance the total direct and indirect emissions embedded in the production process. Direct emissions are emissions from sources that are owned or controlled by the reporting entity, while indirect emissions refer to the production process of the goods (see *Trade Perspectives*, Issue No. 4 of 28 February 2022), both of which will be covered by the CBAM. During the transitional period, when the "*simplified version*" applies, importers will not yet be required to purchase CBAM certificates and the information provided in the reports will not be verified.

The CBAM will cover products in some of the most carbon-intensive sectors at risk of "*carbon leakage*". While the Commission's Proposal foresaw that the CBAM would cover cement, electricity, fertilisers, iron and steel, and aluminium, the provisional agreement reached by the EU Institutions expands the scope to also include "*hydrogen, indirect emissions under certain conditions, certain precursors and downstream products, such as screws and bolts*". The initial scope of the covered products is intended to be gradually extended over time, aiming at covering all sectors subject to the EU's ETS by 2030.

On 1 January 2026, the transitional period is scheduled to end and the *"full CBAM"* would enter into force. At this stage, a carbon levy corresponding to the EU's carbon market price, which currently stands at around EUR 90 per metric tonne, will be payable. Businesses that do not provide their emissions data (or that provide data deemed unacceptable by the EU) will face punitive measures.

The EU's trading partners and trade associations weigh in

The EU's CBAM has led to a number of critical reactions from the EU's trading partners, including the fear that the CBAM constitutes a discriminatory unilateral measure. Since its first announcement, the EU has been increasingly questioned regarding the CBAM's future impacts on trading partners.

In the WTO, some Members raised substantiated concerns. On 10 February 2023, India expressed its concerns at a meeting of the WTO's CTE, circulating a restricted document, *JOB/TE/78*, entitled "*Concerns on emerging trend of using environmental measures as protectionist non-tariff measures"*. In the document, India expands on its concerns around: 1) "*Carbon border measures*"; 2) *"Environment-based management of minimum residue limits in agriculture"*; 3) "*Deforestation-related steps*"; and 4) "*Quantitative import restrictions based on green content of commodities*". In light of climate change and the need to protect the environment, India notes that developing and least developed countries could not afford to take the same set of commitments as developed countries. India adds that such unilateral measures pose *"systemic implications for international law as a whole – since any unilateral action undermines multilaterally negotiated rights and obligations of countries".* In addition, India explained that *"the WTO cannot and should not undermine or render ineffective the specialized rules of multilateral environmental agreements"*. According to India, *"carbon border measures (CBAMs) that are being considered for imposition on imported products, effectively amount to prioritizing a singular policy of the importing country over those of exporting countries and will amount to imposing a unilateral vision of how to combat climate change".* India urged *"WTO Members to ensure that any environment and climate-related trade measures take into account common but differentiated responsibilities and respective capabilities of all Members"*.

On 13 March 2023, China circulated document WT/CTE/W/251 in the CTE, providing *"A proposal for dedicated multilateral discussions on the trade aspects and implications of certain environmental measures",* with a view to deepening multilateral discussions on the matter. China noted that *"trade policies are increasingly used to fulfil environmental goals"* and that these policies should be consistent with WTO rules and not constitute protectionist measures. In the communication, China elaborates on the subject, the modalities and elements, the benefits, the desirability, and the organisation and conduct of such proposed dedicated multilateral discussions and proposes the use of the CTE as a platform for discussions on the EU's CBAM.

Not only EU trading partners, but also trade associations have been raising questions with respect to the CBAM. On 7 November 2022, the *European Steel Association EUROFER* had explained that *"the WTO consistency of such measures needs to be deeply assessed according to their design and details and cannot be disregarded as a matter of principle. […] EU producers will not be granted any undue advantage over competitors*".

On 6 October 2021, the *European non-ferrous metals association Eurometaux* also expressed its views, noting that *"it is vital that the EU both during the initial data gathering phase, and during the phase-in of the CBAM levy, continuously review emission data quality and whether CBAM actually prevents carbon leakage. If not, the process must be stopped until a satisfactory solution has been developed"*.

Consistent with WTO rules?

The CBAM has led to concerns regarding its consistency with the WTO's most-favoured-nation treatment and national treatment principles, as well as the principle of "*common but differentiated responsibilities*" of each country's emission reduction under the *Paris Agreement*. As noted above, the CBAM has been subject to intense scrutiny in the relevant WTO Committees. Especially developing countries that pursue decarbonisation through means other than carbon pricing would understandably deem the CBAM illegitimate and discriminatory in view of the applicable multilateral environmental and trade agreements.

The Commission has so far insisted that it would design a WTO-compatible instrument, but there are a number of points of potential frictions between the future CBAM and the existing WTO rules, notably in relation to obligations under the *General Agreement on Tariffs and Trade* (hereinafter, GATT) 1994, the *WTO Agreement on Subsidies and Countervailing Measures* (hereinafter, SCM), and the *Agreement on Technical Barriers to Trade* (hereinafter TBT Agreement) (see *Trade Perspectives*, Issue No. 15 of 1 August 2022).

With respect to the GATT, it is not inconceivable that the assignation of carbon emissions to certain products, while *de jure* non-discriminatory, might lead to claims of *de facto* discrimination where competing '*like*' products were considered to have less/more carbon emissions. This is particularly true where: either (i) the negatively impacted '*like*' product(s) hail from outside the EU, while the positively impacted '*like*' products derive from within the EU (which would potentially constitute a national treatment violation in violation of Article III:4 of the GATT); or (ii) where the negatively impacted '*like*' products generally hail from one or more WTO Members, while positively impacted '*like*' products come from a different WTO Member or a differing set of WTO Members (which may constitute a violation of the Most-Favoured Nation (MFN) requirement contained in, inter alia, Article I:1 of the GATT). Similar issues might confront the CBAM if it (or aspects of it) were to be deemed a '*technical regulation*'. For example, Article 2.1 of the TBT Agreement precludes the provision of less favourable treatment to '*like*' products on both an MFN and national treatment basis. Moreover, the TBT Agreement places additional obligations on technical regulations, such as the requirement of Article 2.2 thereof that a technical regulation be no more trade restrictive than necessary to fulfil a legitimate objective, or the obligation under Article 2.4 that a measure be based on relevant international standards.

Once fully implemented, the EU might be called to demonstrate that the CBAM neither discriminates between domestic and foreign suppliers, nor between foreign suppliers, or that, if it does, such discrimination is justified under one or more of the available WTO exceptions. Given the early discussions, it can be expected that the CBAM will be constantly assessed as to whether it imposes overly burdensome and/or discriminatory and trade restrictive obligations that are not consistent with WTO law.

The next steps

The compromise text agreed between the EU Institutions still needs to be formally adopted by the European Parliament and the Council. It will then be published in the EU's Official Journal before it can enter into force. On 1 October 2023, the CBAM's preliminary phase will start to be implemented. Discussions within the relevant WTO *fora*, particularly those taking place in the CTE, will likely continue and should be closely monitored in conjunction with the next steps of the EU's legislative process.

ASEAN publishes the second version of the *ASEAN Taxonomy for Sustainable Finance* to boost green financing within the region

In March 2023, the *ASEAN Taxonomy Board* published the second version of the *ASEAN Taxonomy for Sustainable Finance Version 2* (hereinafter, *ASEAN Taxonomy),* which follows the publication of the first version in November 2021. The *ASEAN Taxonomy* offers a classification system for assessing the level of sustainability of an economic activity and is intended to be "*a common building block that enables an orderly transition and fosters sustainable finance adoption by ASEAN Member States*". By implementing these shared standards across the region, ASEAN aims at promoting sustainable finance and supporting a low-carbon economy. The second version of the *ASEAN Taxonomy* introduces several changes to help ASEAN secure financing for the phase-out of coal-fired power plants and to meet the *Paris Agreement* commitments. This version of the *ASEAN Taxonomy* is currently in the technical preparation stage and is to be implemented during the second half of 2023.

Understanding the importance of sustainable finance

The financial sector holds important power in contributing towards a sustainable future, whether by funding the research and development of energy resources or by supporting the deployment of renewable energy. In recent years, '*sustainable finance*' and the incorporation of Environmental, Social and Governance (ESG) considerations (*e.g.*, climate change mitigation, preservation of biodiversity, equality and human rights) in making investment decisions, has been increasingly adopted by businesses and financial institutions. By now, it is clear that sustainable finance is playing a key role in the world's environmental transition, *inter alia*, by directing money towards carbon-neutral projects and resource-efficient economies.

The effects of climate change are projected to have "*disproportionate impacts on the ASEAN Member States with significant threats to welfare, livelihood, and economic activity*". In this context, the role of sustainable finance was recognised by the ASEAN Finance Ministers' and Central Bank Governors' Meeting in 2019, particularly with respect to enabling ASEAN to advance its sustainability agenda. With respect to the *ASEAN Taxonomy*, the Chair of the *ASEAN Taxonomy Board*, *Brunei Darussalam's Central Bank*, highlighted that having a common understanding of what is '*sustainable*' is essential "*if ASEAN is going to attract and orient capital towards sustainable investments and away from non-sustainable activities*".

The ASEAN Taxonomy for Sustainable Finance and its implementation

The *ASEAN Taxonomy* was developed by the *ASEAN Taxonomy Board* to provide investors and policymakers with appropriate benchmarks and definitions to determine which economic

activities can be considered environmentally sustainable. The *ASEAN Taxonomy Board* recognises that, while ASEAN Member States may develop different national sustainability taxonomies, the establishment of a "*common language*" could provide clarity and confidence to all stakeholders. The overarching objective of the *ASEAN Taxonomy* is to create an umbrella framework across the different ASEAN jurisdictions, in order to communicate and coordinate on the labelling of economic activities and financial instruments as '*sustainable*'.

The *ASEAN Taxonomy* is not legally binding and was mainly created with a view to "*provide a framework for interoperability across markets*". The *ASEAN Taxonomy* is currently a priority issue for discussion among the ASEAN Finance Ministers and Central Bank Governors in view of the creation of a framework to guide capital towards more sustainable economic activities. With the *ASEAN Taxonomy*, ASEAN Member States' Governments now dispose of a comprehensive blueprint to help them determine sustainable projects that can be considered for financing and to formulate the necessary domestic policies for their respective green economic transitions. At the same time, investors and companies can rely on the *ASEAN Taxonomy* to make informed investment decisions, promote green credentials against ESG benchmarks, and avoid greenwashing.

The second version of the ASEAN Taxonomy for Sustainable Finance

The *ASEAN Taxonomy* has always been intended to be a '*living document*', subject to periodic reviews and revisions to keep up with technological, scientific, and economic developments. In general terms, the second version of the *ASEAN Taxonomy* is more comprehensive in scope, as it, *inter alia,* incorporates *'social aspects*' as essential criteria of economic activities and puts a strong emphasis on the early closure of coal-fired power plants. The Chairman of the Board of Commissioners of Indonesia's *Financial Services Authority*, *Mahendra Siregar*, underlined that the second version of the *ASEAN Taxonomy* had received positive responses from financial institutions.

Contributing to environmental objectives and meeting certain criteria

In order to be classified as '*sustainable*' under the *ASEAN Taxonomy*, an economic activity must contribute to at least one of four environmental objectives, namely: 1) Climate change mitigation, focusing on decarbonisation efforts; 2) Climate change adaptation, focusing on managing expected negative effects of climate change; 3) Protection of healthy ecosystems and biodiversity, focusing on the "*incorporation of conservation, restoration, and protection mechanisms of the natural ecosystem and biodiversity";* and 4) Resource resilience and the transition to a circular economy, focusing on the materiality of economic activities and "*their impacts to business operations*". Each environmental objective is linked to dedicated criteria of economic activities that fall within its scope. For instance, the general principles under '*climate change mitigation*' objective state that the activity must be in line with *"limiting global temperature rise to no more than 1.5°C and in alignment with the Paris Agreement*".

To be considered as sustainable, the *ASEAN Taxonomy* also requires any economic activity to fulfil three '*essential criteria*', namely: 1) '*Do no significant harm*'*;* 2) '*Remedial measures to transition*'; and 3) '*Social aspects'*, with '*Social aspects*' being a new criterion introduced by the second version of the *ASEAN Taxonomy.* First, the '*Do no significant harm*' criterion states that an economic activity, which contributes to an environmental objective, must not significantly harm any other environmental objective. Second, the '*Remedial measures to transition*' criterion refers to measures that ensure that "*any actual or potential significant harm is removed or rendered not significant*". If an assessment concludes that an economic activity may cause significant harm to an environmental objective, remedial measures must be put in place to effectively remove the harm within 5 years from the assessment date. Third, the '*Social aspects*' criterion concerns the social conditions that could potentially be harmed by the economic activity and provides for three key social aspects that must be considered, namely "*Promotion and Protection of Human Rights*"; "*Prevention of Forced Labour and Protection of Children's Rights*"*;* and "*Impact on People living Close to Investments*".

Colour-codes for economic activities' contribution to environmental objectives

To determine whether an activity contributes to the four environmental objectives and complies with the essential criteria, the *ASEAN Taxonomy* offers two assessment approaches, namely the '*Foundation Framework*' and the '*Plus Standard*'. The *Foundation Framework* uses a principles-based assessment, allowing economic activities to be assessed and classified with the *ASEAN Taxonomy* using qualitative guiding questions, such as whether the activity reduces greenhouse gas emissions or enables other stakeholders to mitigate climate change. Both assessment methods use colour-coded classification systems that represent different levels of an activity's contribution to an economic objective. '*Green*' indicates economic activities that support the objectives of the *ASEAN Taxonomy* and that are aligned with the *Paris Agreement* and its target to limit global warming to 1.5°C. '*Amber*' indicates activities that meet one of the environmental objectives, but could cause harm to other objectives, and *'Red*' indicates activities that fail to meet environmental objectives.

Considering that ASEAN Member States have different starting points in their respective journeys to sustainability, the *Plus Standard* provides for a three-tiered approach, with the different tiers corresponding to the different levels of technical screening criteria (*i.e.*, the criteria against which the classification of the economic activity is assessed). Tiers 2 and 3 are aligned with the '*Amber'* classification, while tier 1 corresponds to the '*Green'* classification. Currently, the *Plus Standard* assessment covers six focus sectors (*i.e.*, agriculture, forestry and fishing; manufacturing; transportation and storage; electricity, gas, steam and air conditioning supply; water supply, sewerage and waste management; and construction and real estate) and three enabling sectors (*i.e.,* carbon capture, storage and utilisation; information and communication; and professional, scientific, and technical).

The technical screening criteria of the *Plus Standard* classify activities based on their contributions to environmental objectives using "*quantitative, qualitative, or nature of Activity-based criteria*". For instance, the investment in electricity generation from renewable non-fossil gaseous and liquid fuels may be classified as '*Amber Tier 3*' or '*Amber Tier 2'* in the *ASEAN Taxonomy* and is assessed on the basis of the intensity of the lifecycle of greenhouse gas (hereinafter, GHG) emissions generated by the entire facility.

Supporting the phase-out of coal-fired power plants

The *ASEAN Taxonomy* notes that coal-fired power plants remain one of the largest GHG emitters within ASEAN and that there are still new coal-fired power plants under construction, mostly in Indonesia, Viet Nam, and the Philippines. Nonetheless, ASEAN Member States have been ramping up efforts to achieve net-zero GHG emissions, including through initiatives to promote the phase-out of coal-fired power plants. Noting the role that the phase out of coal-fired power plants can play in the decarbonisation efforts to support the objectives of the *Paris Agreement*, the second version of the *ASEAN Taxonomy* introduces technical screening criteria for coal phase-outs.

Notably, investment projects that support the phase out coal-fired power plants are now considered an economic activity that may be classified as *'Green'* or *'Amber'*, depending on, *inter alia,* the timeline for the phase-out and whether it aligns with the 1.5°C target. According to ASEAN, the coal phase-out criteria laid down in the *ASEAN Taxonomy* are "*a global first for a regional taxonomy*". This addition was welcomed by Indonesia, which has recently introduced a regulation governing the phase out of coal-fired power plants (see *Trade Perspectives*, Issue No. 20 of 31 October 2022). In this context, Indonesia's Minister of Finance, *Sri Mulyani*, stated that the new criteria would "*provide certainty for the financial institutions to look at projects that can be considered for financing*".

Towards a widespread implementation across ASEAN?

The *ASEAN Taxonomy* can serve as a reliable and comprehensive tool to support ASEAN Governments and businesses in the transition to climate neutrality and great sustainability. As

it is unfortunately not legally binding, the effectiveness of the use of the *ASEAN Taxonomy* will depend on its utilisation and reliance by ASEAN stakeholders. Therefore, ASEAN Member States are encouraged to use the *ASEAN Taxonomy* to develop their own domestic sustainable finance frameworks, such as the setting of requirements for ESG benchmarks, which could help scale up investments in green projects and attract the participation of private investors.

To address '*greenwashing*' and misleading environmental claims, the European Commission publishes a proposal on '*green claims*' and their substantiation

On 22 March 2023, the European Commission (hereinafter, Commission) published a *Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)*, which provides minimum requirements for such claims to prevent '*greenwashing*' and misleading claims. A regulatory framework for environmental claims is one of the actions proposed by the Commission in the context of the *European Green Deal*, which recognised that reliable, comparable, and verifiable information plays an important part in enabling buyers to make more sustainable decisions and reduces the risk of '*greenwashing*'. Together with the Proposal for a *Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information*, also published on 22 March 2023, the proposed *Green Claims Directive* will establish a framework for environmental claims, including environmental labels. This article focuses on the requirements for the substantiation of environmental claims and labels, discusses how they are verified, and looks at enforcement and penalties.

Rationale, scope, and definitions of the proposed *Green Claims Directive*

The reasons for regulating the field of environmental claims and labels are indicated in Recital 1 of the proposed *Green Claims Directive*: "*Claiming to be "green" and sustainable has become a competitiveness factor, with green products registering greater growth than standard products. If goods and services offered and purchased on the internal market are not as environmentally friendly as presented, this would mislead the consumers, hamper the green transition and prevent the reduction of negative environmental impacts*". Recital 1 further notes that, "*With a proliferation of different labels and calculation methods on the market, it is difficult for consumers, businesses, investors and stakeholders to establish if claims are trustworthy*".

Article 1 of the proposed *Green Claims Directive* sets the scope, noting that it sets "*minimum requirements on the substantiation and communication of voluntary environmental claims and environmental labelling in business-to-consumer commercial practices*". Article 2(1) defines '*environmental claim*' as "*defined in Article 2, point (o), of Directive 2005/29/EC*". *Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market* does currently not yet provide for such definition, but the Commission's Proposal *on empowering consumers* defines '*environmental claim*' as "*any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time*". Both proposals define '*explicit environmental claim*' as an "*environmental claim that is in textual form or contained in an environmental label*".

Requirements for the substantiation of environmental claims

In order to ensure that consumers are provided with reliable, comparable, and verifiable information that enables them to make more environmentally sustainable decisions and to reduce the risk of '*greenwashing*', the proposed *Green Claims Directive* establishes requirements for the substantiation of explicit environmental claims. Article 3 of the proposed

Green Claims Directive requires that traders carry out an assessment that must: 1) Specify if the claim is related to the whole product, part of a product, or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities; 2) Rely on recognised scientific evidence, use accurate information and take into account relevant international standards; 3) Demonstrate the significance of impacts, aspects and performance from a life-cycle perspective; 4) Take into account all significant aspects and impacts to assess the performance; 5) Demonstrate whether the claim is accurate for the whole product or only for parts of it; 6) Demonstrate that the claim is not equivalent to requirements imposed by law; 7) Provide information on whether the product performs environmentally significantly better than what is common practice; 8) Identify whether a positive achievement leads to significant worsening another impact; 9) Require greenhouse gas offsets to be reported in a transparent manner; and 10) Include accurate primary or secondary information.

Article 4 of the proposed *Green Claims Directive* sets out further requirements for comparative claims, which refer to claims that state or imply that a product or trader has less or more environmental impacts, or performs better than other products or traders regarding certain environmental aspects. These requirements are essentially: 1) Related to the use of information and data for the assessment of environmental impacts, aspects or performance of compared products or traders; 2) An equivalent coverage of stages along the value chain for the products and traders compared; and 3) The coverage of environmental impacts, aspects or performances is equivalent for the products and traders compared and ensures that those most significant are taken into account for all products and traders compared. Importantly, the proposed *Green Claims Directive* does not prescribe a single method for the assessment, as different types of claims will require different levels of substantiation. The assessment used to substantiate explicit environmental claims need to consider the life-cycle of the product or of the overall activities of the trader in order to identify the relevant impacts that are subject to the claims.

According to the *Explanatory Memorandum* to the proposed *Green Claims Directive*, "*for the assessment to be considered robust, it should include primary, company-specific data, for relevant aspects contributing significantly to the environmental performance of the product or trader referred to in the claim*". Additionally, "*if the process is not run by the trader making the claim and if primary information is not available, the use of secondary information should be permitted, even for processes contributing significantly to the environmental performance of the product or trader*". Both primary and secondary data should show a high level of quality and accuracy.

According to Recital 21 of the proposed *Green Claims Directive*, climate-related claims have been shown "*to be particularly prone to being unclear and ambiguous and to mislead consumers*". This relates notably to environmental claims that products or entities are "*climate neutral*", "*carbon neutral*", "*100% CO2 compensated*", or will be "*net-zero*" by a given year, or similar. Such statements are often based on the "*offsetting*" of greenhouse gas emissions through "*carbon credits*" generated outside the company's value chain, for example from forestry or renewable energy projects. The methodologies underpinning offsets vary widely and are not always transparent, accurate, or consistent. Therefore, the proposed *Green Claims Directive* would require, for climate-related claims, to report in a transparent manner, separately from greenhouse gas emissions, any greenhouse gas emissions offsets used.

The proposed *Green Claims Directive* would empower the Commission to adopt delegated acts to complement the requirements on the substantiation for certain types of claims, following the results of monitoring of the evolution of environmental claims on the market to allow prioritising claims that are prone to mislead consumers. However, the *Explanatory Memorandum* to the proposed *Green Claims Directive* notes that "*for some types of claims it may be necessary for the Commission to act prior to that*".

Requirements regarding environmental claims and labels

Article 5 of the proposed *Green Claims Directive* "*responds to the problem of lack of reliable information on product's environmental characteristics for those traders who make an environmental claim*". Notably, the Proposal sets out requirements for all claims when communicated, for example, that they be accompanied by information on the substantiation. Additionally, Article 6 states that "*comparative claims on the improvement of an environmental impact of a product as compared to another product of the same trader, or that the trader no longer sells to consumers, are to be based on evidence that improvement is significant and achieved in the last five years*".

The proposed *Green Claims Directive* would also regulate the use of environmental labels. For instance, claims or labels that use "*aggregate scoring of the product's overall environmental impact*" would not be permitted unless provided under future EU rules. This could apply to schemes like the *Eco-Score* (see *Trade Perspectives*, Issue No. 8 of 23 April 2021). The Commission underlines that, to date, there are at least 230 different labels, a situation that leads to "*consumer confusion and distrust*". In particular, new public labelling schemes would be prohibited unless developed at the EU level, and any new private schemes would need to show "*higher environmental ambition than existing ones and get a pre-approval to be allowed*". Further to the requirements on the substantiation and communication applicable to all types of claims, the proposed *Green Claims Directive* would build on the requirements of the Proposal on empowering consumers, which would add to the list of commercial practices that are considered unfair, as provided in Annex I to *Directive 2005/29/EC*, the display of a "*sustainability label which is not based on a certification scheme or not established by public authorities*". This means that labels based on self-certification would be prohibited.

Ex-ante verification of environmental claims and labelling schemes

In accordance with Article 10 and 11 of the proposed *Green Claims Directive*, the substantiation and communication of environmental claims and labelling schemes would have to be verified by an officially accredited independent body, with no conflicts of interest to ensure independence of judgment and holding the highest degree of professional integrity. The so-called '*verifier*' must be a third-party conformity assessment body accredited in accordance with *Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products*, "*having the required expertise, equipment, and infrastructure to carry out the verifications as well as enough suitable personnel that observe professional secrecy*". The substantiation and communication of environmental claims would have to be reviewed and updated by the trader every five years.

Infringements, enforcement, penalties, and the way forward

According to Article 17 of the proposed *Green Claims Directive*, infringements could result in a fine, confiscation of revenue gained from related products, exclusion from access to public funding, and up to 12-month exclusion from public procurement procedures. EU Member States would have to ensure that, when penalties are to be imposed, the maximum amount of such fines be at least 4% of the trader's annual turnover in the EU Member State or EU Member States concerned. If the rules were to be already in application, there would presumably be many infringements. An impact assessment, published by the Commission in 2022, highlighted that 53.3% of the examined environmental claims in the EU were found to be "*vague, misleading or unfounded*", that 40% were found to be "*unsubstantiated*", and that half of all '*green labels*' offer "*weak or non-existent verification*". In this context, it is of great importance that the *Green Claims Directive*, once adopted, be properly enforced by EU Member States' authorities monitoring the market. Article 25 of the proposed *Green Claims Directive* provides that EU Member States are to adopt and publish, 18 months after the date of entry into force of the Directive, the laws, regulations and administrative provisions necessary to comply with this Directive, and that those rules are to apply from 24 months after the date of entry into force of the Directive. Following the EU's ordinary legislative procedure, the European Commission's Proposal for the *Green Claims Directive* will now have to be discussed by the European Parliament and the Council of the EU for a common text to be agreed among EU Institutions.

Recently adopted EU legislation

Trade Law

- *Corrigendum to Commission Implementing Regulation (EU) 2022/2515 of 15 December 2022 on the granting of unlimited duty-free access to the Union for 2023 to certain goods originating in Norway resulting from the processing of agricultural products covered by Regulation (EU) No 510/2014 of the European Parliament and of the Council (Official Journal of the European Union L 326 of 21 December 2022)*

- *Council Decision (EU) 2023/702 of 21 March 2023 on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards a decision to be adopted, and recommendations and joint and unilateral declarations to be made*

- *Commission Implementing Regulation (EU) 2023/725 of 31 March 2023 amending Annexes V, XIV and XV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada, Chile, the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry and germinal products of poultry and fresh meat of poultry and game birds and meat products from ungulates, poultry and game birds (Text with EEA relevance)*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/711 of 30 March 2023 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tableware and kitchenware originating in People's Republic of China and amending Implementing Regulation (EU) 2019/1198*

- *Commission Implementing Regulation (EU) 2023/712 of 30 March 2023 initiating a 'new exporter' review of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration*

- *Commission Implementing Regulation (EU) 2023/724 of 31 March 2023 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China, and amending Implementing Regulation (EU) 2019/1198*

- *Commission Implementing Regulation (EU) 2023/738 of 4 April 2023 re-imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19*

- *Commission Implementing Regulation (EU) 2023/737 of 4 April 2023 re-imposing a definitive anti-dumping duty on imports of certain pneumatic tyres, new or*

retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19

Food Law

- *Commission Implementing Regulation (EU) 2023/685 of 27 March 2023 amending Annex I to Implementing Regulation (EU) 2021/605 laying down special control measures for African swine fever (Text with EEA relevance)*

- *Commission Implementing Regulation (EU) 2023/689 of 20 March 2023 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances Bacillus subtilis (Cohn 1872) strain QST 713, Bacillus thuringiensis subsp. Aizawai strains ABTS-1857 and GC-91, Bacillus thuringiensis subsp. Israeliensis (serotype H-14) strain AM65-52, Bacillus thuringiensis subsp. Kurstaki strains ABTS 351, PB 54, SA 11, SA12 and EG 2348, Beauveria bassiana strains ATCC 74040 and GHA, clodinafop, Cydia pomonella Granulovirus (CpGV), cyprodinil, dichlorprop-P, fenpyroximate, fosetyl, malathion, mepanipyrim, metconazole, metrafenone, pirimicarb, pyridaben, pyrimethanil, rimsulfuron, spinosad, Trichoderma asperellum (formerly T. harzianum) strains ICC012, T25 and TV1, Trichoderma atroviride (formerly T. harzianum) strain T11, Trichoderma gamsii (formerly T. viride) strain ICC080, Trichoderma harzianum strains T-22 and ITEM 908, triclopyr, trinexapac, triticonazole and ziram (Text with EEA relevance)*

- *Commission Implementing Regulation (EU) 2023/709 of 29 March 2023 amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin*

- *Commission Regulation (EU) 2023/710 of 30 March 2023 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bromopropylate, chloridazon, fenpropimorph, imazaquin and tralkoxydim in or on certain products (Text with EEA relevance)*

- *Commission Implementing Decision (EU) 2023/719 of 24 March 2023 amending the Annex to Implementing Decision (EU) 2021/641 concerning emergency measures in relation to outbreaks of highly pathogenic avian influenza in certain Member States (notified under document C(2023) 2189) (Text with EEA relevance)*

- *Commission Implementing Regulation (EU) 2023/731 of 3 April 2023 concerning a coordinated multiannual control programme of the Union for 2024, 2025 and 2026 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin and repealing Implementing Regulation (EU) 2022/741 (Text with EEA relevance)*

- *Corrigendum to Commission Regulation (EU) 2023/334 of 2 February 2023 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products (Official Journal of the European Union L 47 of 15 February 2023)*

- *Commission Implementing Regulation (EU) 2023/739 of 4 April 2023 providing for an emergency support measure for the cereal and oilseed sectors in Bulgaria, Poland and Romania*

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